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Correspondence between the Governments
of Canada and the United States, 1929

Printed by Order of Parliament

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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THE *I'M ALONE* INCIDENT

March 28, 1929.

The Hon. VINCENT MASSEY,
Minister of the Dominion of Canada.

SIR,—I have the honor to refer to your visit to the Department on March 26, 1929, when you requested that you be furnished with a statement of the facts concerning the sinking of the vessel *I'm Alone* by the United States Coast Guard on March 22 last.

According to information furnished by the appropriate authorities of this Government, the *I'm Alone* was a notorious smuggling vessel, having been engaged in smuggling liquor into the United States for several years. It is stated that until the latter part of 1928, the *I'm Alone* operated on the New England Coast and had caused the Coast Guard forces a great deal of trouble. During the latter part of 1928, the *I'm Alone* changed its base of operations to Belize, British Honduras.

On February 2, 1929, the *I'm Alone* cleared from Belize for Nassau with a cargo of liquor, and six days later the vessel was sighted by the United States Coast Guard off the coast of Louisiana. The *I'm Alone* returned to Belize on March 6, 1929, in ballast without having proceeded to the destination for which it cleared on February 2. On March 12, 1929, the *I'm Alone* again cleared from Belize with a cargo of liquor, this time for Hamilton, Bermuda.

On March 20, 1929, the *I'm Alone* was sighted by the United States Coast Guard vessel *Wolcott* northwest of Trinity shoal, within approximately ten and one half miles of the Coast of the United States. The *Wolcott* ordered the *I'm Alone* to heave to for boarding and examination, but this order was ignored, whereupon the *Wolcott* fired a warning shot across the bow of the *I'm Alone* and repeated its command for the vessel to heave to. When the second command was not complied with, the *Wolcott* fired through the sails and rigging of the vessel. The *I'm Alone* was proceeding seaward and the *Wolcott* took up the chase. The *Wolcott's* gun jammed and it could not therefore stop the *I'm Alone* but it kept in close chase and reported the incident to the Commanding Officer of the Coast Guard Base at Paseagoula, Mississippi, who dispatched the vessels *Dexter* and *Dallas* to assist the *Wolcott*.

The *Wolcott* continued the pursuit of the *I'm Alone* and, according to statements of the appropriate authorities, was at all times within sight of it. The Coast Guard vessel *Dexter* overhauled the *Wolcott* close up with the *I'm Alone* about eight a.m. on March 22 with the latter vessel heading toward Yucatan. The Commander of the *Dexter* ordered the *I'm Alone* to heave to but the master of the latter vessel refused saying that he would be sunk rather than stop. The commanding officer of the *Dexter* then spoke to the master of the *I'm Alone* through a megaphone and informed him that the *I'm Alone* would be sunk unless it obeyed the command to stop. Warning shots were fired ahead, and, when the vessel did not stop, the *Dexter* fired through the rigging and later put about a dozen shots into the hull of the *I'm Alone*. It is stated that the sea was too rough to permit the *I'm Alone* to be boarded and seized by force and that furthermore the master of the *I'm Alone* waved a revolver in a threatening manner indicating that he would resist forcibly any attempt to board his vessel.

The *I'm Alone* sank at 9.05 a.m. on March 22, in latitude 25° 41′ and longitude 90° 45′. The Coast Guard vessels picked up the members of the crew of the *I'm Alone* with the exception of one person who was drowned. When the body of this seaman was taken from the water, the members of the Coast Guard worked for more than two and one-half hours in an attempt to resuscitate him but without avail.

Accept, Sir, the renewed assurances of my highest consideration.

FOR THE SECRETARY OF STATE:

(Signed) W. R. CASTLE, JR.

Copy

No. 52.

9th April, 1929.

The Hon. HENRY L. STIMSON,
Secretary of State of the United States,
Washington, D.C.

SIR,—I have the honour to acknowledge the receipt of Mr. Castle's note of March 28th, 1929, in which he transmitted to me information furnished by the appropriate authorities of the Government of the United States concerning the sinking of the Canadian schooner *I'm Alone* by the United States Coast Guard on March 22nd. I did not fail to bring the contents of this note immediately to the notice of His Majesty's Government in Canada, and I have now been instructed by the Secretary of State for External Affairs to thank you for the promptness with which my request for information was complied with, and to direct your attention to certain aspects of the incident.

2. The schooner *I'm Alone*, which was registered at Lunenburg, Nova Scotia, had unquestionably been engaged for a number of years, under various owners, in endeavouring to smuggle liquor into the United States.

3. In the present instance, the schooner *I'm Alone* arrived off the Louisiana coast early on the 20th March, and anchored at a point which, according to the information furnished by Mr. Castle, was ten and a half miles from the shore, and according to the master was not less than fourteen and a half miles distant. On the approach of the United States Revenue Cutter *Wolcott,* the schooner hove up anchor and made off south by west. It is stated that half an hour later the cutter came up and ordered the *I'm Alone* to heave to for examination, and that her captain refused on the ground that he was not within United States jurisdiction. After firing some blank shots the *Wolcott* proceeded to a tanker steaming westward, and upon returning took up the pursuit. Following a fruitless colloquy on board the schooner between the captain of the *Wolcott* and the master of the schooner, pursuit continued; the cutter, after again demanding that the schooner should heave to, fired several shots through her sails and rigging. The pursuit was continued on the high seas for two days and two nights. On the morning of the 22nd, when the schooner was in latitude 25°41′ and longitude 90°45′, or over two hundred miles from the United States coast, the cutter *Dexter* came up from another direction and signalled to the schooner to heave to or be fired upon. The captain is stated to have refused on the ground that the coast guard vessel had no jurisdiction on the high seas. Fire was then opened with a three inch gun and rifles, some sixty or seventy

shells being stated to have struck the schooner, though no member of the crew appears to have been hit. At frequent intervals the schooner was summoned to heave to, but repeatedly refused. Finally the schooner was sunk and the crew plunged into the sea, which was now rough from a rising gale. All the members were picked up by the two cutters, but the boatswain, a French citizen from St. Pierre, had apparently died from drowning before being picked up and could not be resuscitated. The crew were conveyed to New Orleans, and placed under arrest.

4. The adoption by the United States of a policy of national prohibition of the importation, manufacture or sale of intoxicating liquors for beverage purposes, differing materially from the policies in regard to control of the liquor traffic which were in force in the majority of countries, inevitably foreshadowed international difficulties through the likelihood of smuggling operations on a large scale. Owing to its close proximity and extensive common borders, no country was likely to be more concerned than Canada or more conscious of the desirability of making certain that all possible neighbourly requirements should be fulfilled. The United States Government is familiar with the extent to which the Government of Canada has endeavoured to fulfil this neighbourly obligation. Under a convention signed on the 6th June, 1924, provision was made for the furnishing of information regarding clearances issued to vessels suspected of being engaged in an attempt to smuggle goods into the other country, and for the refusal of clearances to vessels obviously unfit to carry their cargoes to the destination named in the applications for clearance. The extension in 1927 of the requirement of a bond in double duties on the exportation of liquor from Canadian Customs warehouses, to cover cargoes of vessels coming into Canadian ports for provisions, shelter or repairs, made it difficult for vessels with liquor cargoes which might be intended for United States consumption to establish bases in Canadian ports, and very materially aided the United States authorities in preventing smuggling by sea in the North Atlantic. The adoption in 1928 of measures, to take full effect in 1930, to prevent the storing of imported liquors, other than liquors imported by the provincial authorities, in Customs warehouses, particularly in Nova Scotia and British Columbia, from which re-export might be made after payment of duty, is leading to the elimination of another source of smuggling into the United States. Other measures have been adopted which have had similar results, and a conference has recently been held in Ottawa between United States and Canadian officials to consider the possibility of further action and proposals made for additional measures.

5. The most difficult problem, however, was that of the measures which could be taken to prevent smuggling along the coasts of the United States. It was apparent that difficulty would arise in controlling smuggling, particularly at the outset, if the preventive operations of the United States authorities were to be confined wholly to territorial waters. On the other hand, assent to the extension of such operations to foreign vessels on the high seas presented serious difficulty to other countries, in view of the vital importance of the long established rule of free passage on the high seas in time of peace. It was desirable that there should be an agreed and absolutely definite understanding as to how these conflicting interests could be reconciled.

6. The United States Government accordingly took the initiative in June, 1922, in proposing to His Majesty's Government in the United Kingdom the conclusion of a treaty authorizing the exercise of the right of search beyond the three-mile limit of territorial waters. Negotiations continued for over a year. In November, 1923, advantage was taken of the presence in London of representatives of the Canadian and other Dominion Governments at the

Imperial Conference of that year to discuss the question fully. The Canadian representatives supported the view that, while affirming the principle of the three-mile limit, it was desirable to meet the United States request for an extension of the right of search beyond the three-mile limit for the purpose in question. A Convention to this end, approved by all His Majesty's Governments, was signed, and ratifications were exchanged, at Washington in 1924.

7. The Convention, it will be recalled, was stated to be concluded because the parties were desirous of avoiding any difficulties which might arise in connection with the laws in force in the United States on the subject of alcoholic beverages. The parties reaffirmed their intention to uphold the three-mile limit of territorial waters. His Britannic Majesty agreed that he would raise no objection to the boarding of private vessels under the British flag outside territorial waters by United States authorities for enquiry and if appearances warranted, for search as to whether the vessel was endeavouring to smuggle liquor into the United States. If reasonable cause appeared for belief that the vessel had committed or was committing or was attempting to commit an offence against United States laws prohibiting the importation of alcoholic beverages, it might be seized and taken into a United States port. The rights so conferred were not to be exercised at a greater distance from the United States coast than could be traversed in one hour by the vessel suspected of endeavouring to commit the offence, or by any other vessel in which the liquor was intended to be conveyed to shore.

8. It was of the essence of the Convention that its provisions covered the whole field of extra-territorial seizures. The conclusion that seizures of British vessels outside territorial waters would not be warranted, except in accordance with the terms to be agreed upon, was clearly expressed in a note from the Secretary of State to the British Ambassador of the 19th July, 1923, as follows:

> It may confidently be asserted that there would be no disposition on the part of the American authorities, and the special agreement would not justify any attempt to seize a British vessel, save within the limits proposed, and when it was clear that the vessel concerned was directly involved in an attempt to introduce its illicit cargo into the territory of the United States.

9. Animated, therefore, by a friendly desire not to hinder the Government of the United States in the enforcement of its laws, and anxious solely to uphold the exact performance of treaty obligations and the maintenance in full integrity of the rules which protect the freedom of traffic on the high seas, His Majesty's Government in Canada has given most careful consideration to the circumstances of the sinking of the *I'm Alone*, as set forth in Mr. Castle's note and in depositions made before His Majesty's Consul General in New Orleans by the Captain of the vessel and by members of his crew. The conclusion has been reluctantly reached that, on the evidence now available, the pursuit and sinking of the vessel appears not to have been authorized either by the terms of the Convention of January, 1924, or by the rules of international law.

10. It appears to be established that the vessel was at all times beyond the limit of an hour's sailing distance from the shore. To determine the validity, under the Convention of January, 1924, of any interference with the vessel when she was first sighted on March 20, by the United States Coast Guard vessel *Wolcott*, it is necessary to examine the evidence regarding both the speed and the exact position of the *I'm Alone*. The testimony of the Captain concerning the vessel's speed given before His Majesty's Consul General in New Orleans, is as follows:

> Q. "What was the speed of your vessel just before you anchored?"
> A. "Positively not more than $6\frac{3}{4}$ knots".....

Q. "What is the longest run in 24 hours that the boat has ever done with engines running and sails set?"

A. "231 knots, with a moderate gale on the quarter, and then under conditions in which the vessel had to be in ballast. We did less with cargo". . . . .

(After the Captain had described the beginning of the pursuit)

Q. "Could you give me any estimate of your speed?"

A. "At that moment at the very outside we were making about $6\frac{3}{4}$ knots, perhaps, it would be just about our best speed, as I knew that if I ran my port engine on full speed opened out that the old trouble would probably leave us in jeopardy".

(The Captain previously testified that he was at anchor when observed by the *Wolcott* in order to examine his port engine, in which a bottom-end cylinder bearing had burned out)

The deposition of the mate of the *I'm Alone,* John Williams, contains the following evidence on the vessel's speed:—

Q. "What speed were you going then?" (i.e. when first hailed by the *Wolcott*)

A. "Roughly $7\frac{1}{2}$ knots, sir".

Q. "Could you do 8"?

A. "No, sir, couldn't do eight knots with power. I had been looking after the log for 20,000 miles and the best we ever did with canvas and power and a gale was $9\frac{1}{2}$ knots."

Q. "You have never known her to do better?"

A. "No, sir".

Q. "When she did that run were the engines in perfect condition?"

A. "Yes, sir. That was the first trip, we took her from Halifax to St. Pierre".

The deposition of the Chief Engineer includes the following testimony:—

Q. "What speed do you consider you could get out of the schooner with both engines well?"

A. "The condition in which the shape of the engines were we could not do better than $7\frac{1}{2}$ knots, a little better with sails and a fair breeze. It was quite a good while since we were docked and the bottom was pretty dirty".

From the testimony it appears that the vessel's speed at the time her pursuit began, with one engine partially disabled, was not more than $7\frac{1}{2}$ knots an hour, and that the best speed of which she was capable in the most favourable conditions was $9\frac{1}{2}$ knots an hour. Since in the note from your Government it is stated that the vessel was "within approximately ten and one half miles off the coast of the United States" when sighted by the *Wolcott*, it appears that, if that indeed were her position, she was then beyond an hour's sailing distance from the shore.

11. There are, however, reasons of considerable force for believing that the *I'm Alone* was in fact at a still greater distance from the shore than $10\frac{1}{2}$ miles. The Captain, a navigator of long experience, has deposed that on the morning on which the pursuit began he had anchored in order to examine his defective engine, a purpose which provided no incentive to come close inshore. He plotted his course to his place of anchorage from a fixed point, the Trinity Shoal Light Buoy, which is some twenty-four miles from the shore, and his evidence of his course thence to his anchorage is as follows:—

"I was looking for an inconspicuous place to anchor to make examination of my engines. I ran on a course from that buoy west-north-west 5 miles and then north $\frac{1}{2}$ west, which is true north another 5 miles, and

allowing 2 knots of current with me to the north-west, I estimated my position, allowing for such current, to be $14\frac{1}{2}$ to $14\frac{3}{4}$ miles from the coast of the United States. I knew positively from the speed of my ship and from the log which I had been using for thousands of miles to be correct, that I could not be any nearer in at that point after running such a short distance. I anchored there roughly, I do not know the exact time, I may be 10 or 15 minutes out, about 5 a.m. I had the intention of going out again shortly after if the weather was favourable and engines in good condition".

The Captain's statement of the distance run from the Trinity Shoal Light Buoy to his anchorage is supported by the mate's evidence as follows:—

Q. "Could you see the Trinity Shoal Light Buoy?"

A. "Yes, sir. We passed it".

Q. "How far do you think you were from the Buoy? When you anchored?"

A. "The Captain told me that when she ran 5 miles west-north-west to let him know, which I did, after that he changed the course to north and told me to let him know when she had ran 5 miles".

Q. "Did you then drop anchor?"

A. "He gave me orders to drop anchor. The engines had to be fixed".

This course of the vessel, making alowance for current as stated in the Captain's testimony, would place the position at which she anchored between $14\frac{1}{2}$ and 15 miles from the shore.

12. In any case the pursuit lasted through two days and two nights, far beyond the starting point, and the sinking took place over two hundred miles southward in open sea. It has been intimated that pursuit and seizure on the high seas might be justified on the ground of hot and continuous pursuit. It is agreed that international law recognizes that pursuit begun within territorial waters may be continued on the high seas, if immediate and continuous. The validity of this doctrine has been fully recognized by Canadian courts. It does not, however, appear to apply to the present case. The pursuit did not begin within the territorial three-mile limit which is an essential factor. That the pursuit should be intiated within strictly territorial waters was clearly recognised by the Secretary of State in an address on January 23, 1924, shortly after the signature of the treaty:—

"It is quite aparent that this government is not in a position to maintain that its territorial waters extend beyond the three-mile limit, and in order to avoid liability to other governments, it is important that in the enforcement of the laws of the United States this limit should be appropriately recognised. . . .It does not follow, however, that this government is entirely without power to protect itself from the abuses committed by hovering vessels. There may be such a direct connection between the operation of the vessel and the violation of the laws prescribed by the territorial severeign as to justify seizure even outside the three-mile limit. This may be illustrated by the case of 'hot pursuit', where the vessel has committed an offense against those laws and is caught while trying to escape. The practice which permits the following and seizure of a foreign vessel which puts to sea in order to avoid detention for violation of the laws of the State whose waters it has entered, is based on the principle of necessity for the effective administration of justice". (Foreign Affairs, Special Supplement to Vol. II, No. 2, pps. IV and V.)

It is further to be noted that the cutter which sank the schooner had not participated in the original pursuit, but had come up from an entirely different direction two days later. Under these circumstances, the most essential elements of justification under the doctrine of hot pursuit appear to be lacking.

13. It is desired, finally, to bring to your attention the exact language of section 2 of Article II of the Convention of January, 1924:—

> "If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offence against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or posessions for adjudication in accordance with such laws".

The right of seizure conferred by this Article may be admitted to carry with it constructively the right to exercise the minimum amount of force necessary to effect seizure. Even within the treaty-limit, His Majesty's Government in Canada would be loath to admit that the phrase "the vessel may be seized and taken into a port of the United States" would warrant action so drastic as the destruction of a vessel; still less does authority appear to be conferred for the destruction of a vessel by shell-fire on the high seas, accompanied by loss of life, after a pursuit lasting for two days. It further seems probable that the *Wolcott* could have boarded the *I'm Alone* without endangering either vessel soon after the *I'm Alone* was first sighted by the *Wolcott* on March 20th. The evidence of the Captain on this point is as follows:

> Q. "Could she have boarded you at that time? Assuming that she could have run up alongside?"
> A. "Yes, sir. He might possibly have done so had he tried".
> Q. "Did he try?"
> A. "No, sir".

The mate deposed on the point as follows:—

> Q. "Could he have come alongside at that time had he wished?"
> A. "Easy".
> Q. "Did he?"
> A. "No, sir".

It clearly appears furthermore that, when the United States Coast Guard vessel *Dexter* joined in the pursuit on March 22nd and commenced firing on the *I'm Alone*, it was with the deliberate intention of sinking the vessel and not merely of rendering her helpless, as might have been done, for example by crippling her rudder. The mate of the *I'm Alone* records in his disposition the following conversation with the Captain of the *Wolcott* after he had been rescued from the sea:

> Q. "Did you speak to any of the crew of the *Wolcott*?"
> A. "They were talking to us. The Captain said to me that it was too bad, he said he would not have done it. He said that he advised the Captain of the *Dexter* to wait for smoother weather and he would have gone up alongside and tried to put men on board and avoid bloodshed".

I may add that Captain Randell denies that he ever threatened to use force if an attempt were made to board his ship, or that he flourished a revolver at any time during the pursuit; his testimony is supported by the evidence of the mate and chief engineer. If, as is intimated, the sea was too rough for boarding, it was doubly unfortunate that the vessel was deliberately sunk and the crew plunged into the sea, in imminent peril of drowning, with the result, in fact, of the death of one member of the crew.

14. I have been instructed to state that His Majesty's Government in Canada remains fully convinced of the desirability of continued co-operation with the Government of the United States in dealing with the smuggling traffic under the Convention of January, 1924, and the other measures to which I have alluded; there is no desire to support in any way vessels engaged in this traffic against any measures adopted by the United States for the enforcement of its laws which in their international aspect have been the subject of agreement. It is believed, however, that the Government of the United States will agree that it is essential for the effective operation of the Convention of January 1924 and for the attainment of the definite and agreed procedure which was the object of the contracting parties, that the terms of the Convention should be strictly observed. His Majesty's Government in Canada trusts that the Government of the United States will further agree that the search and seizure of vessels beyond territorial waters should be exercised in accordance with the terms of the Convention, that pursuit should not be continued beyond an hour's sailing distance from the shore unless initiated within territorial waters, that the measures adopted for enforcing the rights conferred by the Convention should be confined to the reasonable minimum necessary for their enforcement, and that in the present instance the extreme course adopted constitutes just ground for such redress as is now possible.

I have the honour to be, with the highest consideration,

Sir,

Your most obedient, humble servant,

(Sgd.) VINCENT MASSEY.

April 17, 1929.

The Hon. VINCENT MASSEY,
Minister of the Dominion of Canada.

SIR,—I have the honour to acknowledge the receipt of your note No. 52, of April 9, 1929, concerning the sinking of the Canadian schooner *I'm Alone* by the United States Coast Guard on March 22, last.

Before proceeding to a discussion of this case, I should like to assure you that this Government is profoundly grateful to your Government for the measure of cooperation which it has received from your officials in the matter of the prevention of smuggling into the United States. The Convention which was signed on June 6, 1924, to suppress smuggling has been helpful, and your officials have faithfully discharged their obligations under this Convention. Canada has, as pointed out in your note, enacted a number of laws the effect of which has been to render it more difficult for smugglers to use Canadian ports in their efforts illegally to introduce liquor into the United States. The Government of the United States is deeply grateful to your Government for this friendly interest and valuable cooperation which has thus been manifested.

With respect to the case of the *I'm Alone,* may I point out that I recognize fully the position of your Government in feeling the necessity of making representations even though these representations are made in the case of a vessel which has for several years openly violated the laws of the United States and even though the Captain of the vessel has boasted of this fact. There is not in the mind of this Government the slightest question as to the propriety of representations in this and similar cases. This Government recognizes that in cases

of this nature the Canadian Government is interested primarily in the principles of international law involved, and it is also an established principle of law that every alleged offender has the right to the most competent advocate of his case.

It is the contention of this Government that the *I'm Alone* was sighted and commanded to heave to at a point not more than 10.8 miles from the coast of the United States; that this distance is less than the distance which could be traversed by the vessel in one hour; that the master of the *I'm Alone* refused to obey the repeated commands of the Coast Guard officers to heave to for boarding and examination; and that, under the doctrine of "Hot Pursuit", the Coast Guard vessels possessed authority to follow the *I'm Alone* beyond the distance of one hour's sailing stipulated in the Treaty between the United States and His Britannic Majesty of January 23, 1924, and to compel it to comply with the orders of the Coast Guard officers to stop.

A detailed report in regard to this incident has been received from the Secretary of the Treasury who, as you know, has jurisdiction over the Coast Guard. In preparing this report the Coast Guard officers received the co-operation of a Special Agent of the Customs Bureau. Moreover, an assistant to the Attorney General of the United States, who went to New Orleans for the purpose, has carefully checked all of the information contained in this report.

According to this exhaustive report, the *I'm Alone* was first hailed and commanded to stop when at a distance of no more than 10.8 miles from the nearest land at 6.10 a.m. on March 20, 1929. The calculations of the commanding officer of the *Wolcott* have been carefully checked by expert navigating officers of the Coast Guard and have been found to be correct. I wish here to invite your especial attention to a circumstance wherein a wholly disinterested observer has furnished conclusive evidence which corroborates beyond question the testimony of the commanding officer of the *Wolcott* in his determination of the position of the *I'm Alone* at the time the chase began. The American tank steamer *Hadnot,* bound from Charleston to Galveston, had passed Trinity Shoals Gas and Whistling Buoy No. 4 close aboard about 8 a.m. that day. On sighting the *Hadnot* while the pursuit was in progress, the commanding officer of the *Wolcott,* with rare presence of mind, decided to check his own position with that of this intermediary vessel which he knew must have known its own position accurately because of its departure from this prominent and well known aid to navigation shortly before. At the time the *Hadnot* was spoken by the *Wolcott,* about 8.20 a.m., it was five miles to the westward of the buoy. This fact, together with the *Wolcott's* ship's log,, has enabled the officers of the Coast Guard reviewing the case definitely to work back the navigation data of the *Wolcott* and to fix the position of the *I'm Alone,* at the beginning of the pursuit, with certainty. This computation results in an agreement with the statement of the commanding officer of the *Wolcott* that the *I'm Alone* was not at a greater distance than 10.8 miles from the shore line of the United States. The master of the *Hadnot,* furnished an affidavit to the Headquarters of the Coast Guard recounting this occurrence. Impartial evidence such as this, corroborating as it does the precise, scientific calculations of the commanding officer of the *Wolcott,* cannot but negative the statement of his position given by the master of the *I'm Alone.*

It may be added that all of the data respecting the position of the *I'm Alone* at the time the pursuit began have been carefully checked by a captain in the Coast Guard, who is a graduate of the United States Naval Academy and who has had forty years of nautical experience. The calculations of the master of the *I'm Alone* are not only based upon less scientific methods but are also unchecked and unsupported by other evidence.

With further relation to the distance of the *I'm Alone* from shore when first commanded to heave to, may I point out that the action of Captain Randall in refusing to comply with this order would seem to contradict his statement that he

was beyond treaty limits. If, as Captain Randall alleges, he believed that his vessel was beyond one hour's sailing distance from shore when first hailed, he must have known that his vessel could not legally be seized by the Coast Guard vessel and that he had nothing whatever to fear in complying with the command to stop and be examined. Instead of complying with this order, Captain Randall saw fit to flee and thus to defy a Coast Guard vessel of the United States engaged in the lawful exercise of its police powers, and he later allowed his vessel to be shelled and sunk rather than stop. It would thus appear that by his very action in fleeing and thus placing in jeopardy the safety of his ship and the lives of his crew, Captain Randall admitted his own belief that his vessel was within Treaty limits and thus subject to seizure.

As regards the speed of the *I'm Alone,* I may say that according to my information, this vessel was originally built as a fishing craft similar in type to the so-called "Gloucester" fishing vessels. These vessels are designed to transport fish over long distances in as short as time as possible in order that the cargo may be delivered to market in good condition. It appears that the *I'm Alone* was equipped with two 100 h.p. engines, in addition to full sails. Mr. Edward C. Hobbs, engineer of the *I'm Alone,* testified under oath at New Orleans on March 24 that the speed of the *I'm Alone,* with the engines alone, was to 8 to $8\frac{1}{2}$ knots. It is well known that vessels of the type of the *I'm Alone* have frequently attained speeds of more than 14 knots. The *I'm Alone* was well known officers of the Coast Guard. For a period of more than four years, it successfully eluded the patrol vessels of that Service chiefly because of its superior speed.

On March 27, 1929, Mr. Melville L. Matson, of the Coast Guard, testified that on the evening of November 30, 1928, while he was in command of the Coast Guard Cutter *Wolcott,* he pursued the *I'm Alone* off the coast of Louisiana and that the latter vessel, because of its superior speed was able to escape. Mr. Matson testified that during this chase the *Wolcott's* speed was $10\frac{1}{2}$ knots and that, since the *I'm Alone* outsailed his vessel, it is his opinion that the speed of the *I'm Alone* was not less than 12 knots.

According to the records of the Coast Guard, at 10 a.m. on July 6, 1926, the *I'm Alone* was being trailed by the Coast Guard vessel *Acushnet* off Newport, Rhode Island. It suddenly put on full speed (power and sail) and began to draw away from the *Acushnet.* The latter vessel put on full speed and made every possible effort to keep up with the *I'm Alone* but at 10.30 a.m. the latter had placed such a distance between itself and the *Acushnet* that further pursuit was fruitless. The *Acushnet* has steam engines designed to develop 1000 h.p. and, according to its log, developed during this chase a speed of 12.6 knots. The Coast Guard authorities, who have carefully checked the computations of the *Acushnet* with respect to its speed, estimate that on this occasion the maximum speed of the *I'm Alone* must have been not less than 14.1 knots.

At 7.35 p.m. October 13, 1926, the U.S.S. *Ossipee* was trailing the British schooner *I'm Alone* off the New England coast. The sea was smooth and the wind was south by east, force 5 Beaufort scale. The *I'm Alone* was heading approximately 80 degrees magnetic when it suddenly took full advantage of the prevailing wind and began to make full speed. The *Ossipee* is a high powered vessel and it was compelled to attain its maximum speed of 13.5 knots to keep the fleeing *I'm Alone* in sight. The commanding officer of the Coast Guard vessel, Commander Stanley B. Parker, reported at the time in his official cruise report that 13 knots would have been insufficient to keep the *I'm Alone* in sight and that the speed of 13.5 knots barely permitted him to regain his former position close astern of the schooner.

From the foregoing, it would seem to be established that the *I'm Alone* when first commanded to heave to was within one hour's sailing of the United States. When the master of the *I'm Alone* refused to obey the repeated com-

mands to heave to, the *Wolcott,* after firing warning shots across the bow, fired through the sails and rigging of the schooner, the Commanding Officer of the *Wolcott* continuing his demand that the *I'm Alone* heave to. Since the master of the *I'm Alone* still refused to stop, it would have been difficult, and even dangerous, for an attempt to be made by the Coast Guard vessel forcibly to board it. In this regard, the following question was put to Captain Randell on March 24, last, during the course of his examination by a Special Agent of the Customs Bureau at New Orleans:

> "In view of the rate of speed at which you were traveling and the condition of the sea, could he have put a boarding party on board your boat without your slowing down?"

Captain Randell's answer was: "Positively no, sir. He would have jeopardized his ship and his men." Captain Randell had previously testified that his vessel did not decrease its speed when ordered by the *Wolcott* to heave to, but that it continued on at the same speed at all times.

During the course of the same examination, the following question was propounded to Captain Randell:

> "From the time the *Wolcott* first picked you up on the 20th, until your vessel was sunk, as stated on the 22nd, was she continuously in your sight?"

Captain Randell's answer, under oath, was "Yes." From the foregoing and the other evidence in the case, there can be no question that the pursuit was immediately begun and was continuous.

The legal aspects of the case as raised in your note appear to be the following, namely:

(1) Whether the doctrine of hot pursuit is applicable to the case since,

- (*a*) the chase began not from territorial waters (i.e. the 3 mile limit) but from the treaty distance of one hour's sailing;
- (*b*) the arrest of the vessel was performed not by the original pursuing vessel, but by another which had been called for assistance.

(2) Whether the degree of force used in this case was warranted.

It is not understood that your Government questions the validity of the doctrine of hot pursuit as such, but merely its application in the instant case. It may, however, be of passing interest to note that in the case of the *North,* an American fishing vessel found violating the fishing laws of Canada within the 3 mile limit which was pursued beyond that limit and seized upon the high seas, the Supreme Court of Canada upheld the doctrine of hot pursuit. Discussing the doctrine the Court said *inter alia*:

> .....This right has been repeatedly asserted by legislation relative to breaches of shipping laws, neutrality laws, and customs or revenue laws, as well as the case of fisheries. In each case the reasonable necessity seems to have been the basis for such legislation and the reason for its recognition in international law." (37 Canadian Supreme Court Reports, 385).

The question whether the doctrine of hot pursuit is applicable in cases where the chase began without the customary three mile limit, but within the treaty distance of one hour's sailing, has been given consideration by the Federal courts of the United States, notably, in the cases of the *Pescawha,* the *Newton Bay* and the *Vinces.* In the last named case, it may be recalled that the British schooner *Vinces* was signalled to stop by a Coast Guard vessel seven and one-half miles from the shore. This she refused to do and she was

chased to a distance of twelve and three-quarters miles from the shore. In the course of its opinion upholding the validity of the seizure of the vessel the Court expressed itself in part as follows: —

> ". . . . . We think it is clear under the hot pursuit doctrine that if the right of seizure existed at the time the vessel was signalled the right was not lost because she had succeeded in getting further from port in her attempt to run away."

It may be added that in the two other cases cited above the Courts of the United States have upheld the validity of the seizure on the high seas of vessels suspected of violating the laws of the United States where such vessels had escaped, not from territorial waters of the United States (i.e. the 3 mile limit), but from the distance of one hour's sailing from the coast of the United States. While I am not unmindful that the decisions of municipal tribunals, however considered their opinion may be, cannot necessarily be regarded as laying down principles of international law binding on foreign states, they are entitled to respectful consideration. It may not be amiss in this respect to point out that the Courts of the United States have not hesitated to denounce executive officers of this Government where their activities, in the Court's estimation, have been in violation of municipal or international law. This occurred notably in the cases of the *Sagatied* and the *George and Earl,* where the Courts held the seizures illegal.

Moreover, may I be permitted to point out that no complaint has been made by His Majesty's Governments in Canada or Great Britain against the enforcement of the doctrine of hot pursuit in the cases of the *Pescawha, The Newton Bay* and the *Vinces,* above referred to, which from the statement of the facts in these cases, appear to have been similar to that in the instant case with the possible exception of the amount of force used to bring the vessel to a stop.

In the estimation of this Government, the correct principle underlying the doctrine of hot pursuit is that if the arrest would have been valid when the vessel was first hailed, but was made impossible through the illegal action of the pursued vessel in failing to stop when ordered to do so, then hot pursuit is justified and the locus of the arrest and the distance of the pursuit are immaterial provided:

(1) that it is without the territorial waters of any other state;

(2) that the pursuit has been hot and continuous.

With regard to the duration of pursuit I may state that it is the view of this Government that this is unimportant provided the other elements of hot pursuit are always present. In this relation, may I cite the opinion of the British publicist, Piggott, in his work entitled "Nationality", volume II, pages 35-40, in which he holds that "*there appears to be no limit of space or time during which it may continue.*" On the same point Pitt Cobbett makes the following comment:—

> "This is sometimes called the law of 'hot pursuit' because it is an essential condition of its validity that the pursuit should be started immediately, and that the arrest should be effected, if at all, in the course of the pursuit. *Subject to this, the pursuit may be continued indefinitely or until the vessel passes into the territorial waters of another State.*" (Leading Cases on International Law, 4th ed. Part I, p. 175).

The following quotation from Piggott is believed to be of interest in this relation:—

> "The two familiar examples of the application of the principle are offences against the revenue laws, or against the fishery laws, *committed within the revenue or the fishery waters respectively.* In these cases there is authority both in practice and judicial opinion, that hot pursuit outside those areas on to the high sea would be justified and the seizure upheld as consistent with the law of nations." (Nationality, Vol. II, pp. 35-40).

Article II of the Convention between the United States and His Britannic Majesty of January 23, 1924, recognizes the right of the United States to seize a British vessel within one hour's sailing distance from the coast where there is reasonable cause to believe that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States. One of the purposes of Article II of the Convention just referred to was to extend in effect the distance from the coast of the United Staes within which the jurisdiction of this country might be exercised with respect to certain classes of British ships. Should the right of the United States authorities be denied to continue the pursuit of vessels on the high seas when they have been hailed within the treaty limit, it would seem that the advantages purported to be granted by the treaty are illusory, since it would always be open to offending vessels to refuse to stop when signalled, and flee to the high seas. While it is true that most publicists have predicted the right of "Hot Pursuit" upon an effort to arrest within territorial waters, may I point out that the rights conferred in the so-called liquor treaty between the United States and His Britannic Majesty are of a novel character and have extended the right of arrest to a greater distance then had heretofore been acknowledged under international law.

With regard to the fact that the arrest of the *I'm Alone* was performed not by the original pursuing vessel but by another which had been called for assistance, I desire to present the following considerations.

It would seem perfectly clear from the statement of the facts in this case that the *Wolcott* was in continuous pursuit of the *I'm Alone* and that it was present at all times until the later was sunk by the *Dexter* which had been called for assistance in view of the fact that the *Wolcott* had jammed its gun. It should be understood that the *Dexter* and the *Wolcott* were operating conjointly as a unit of the same force and under one command. Discussing the limitations upon the doctrine of "Hot Pursuit", the British publicist Hall says:—

> "The restriction of the permission within the bounds stated may readily be explained by the abuses which would spring from a right to waylay and bring in ships at a subsequent time, when the identity of the vessel or of the persons on board might be doubtful." (Hall, 7th ed., 266).

It is perfectly clear, of course, that in this case there could have been no doubt of the identity of the vessel and that there was no question of waylaying and bringing in the *I'm Alone* "at a subsequent time."

It is submitted that so long as the *Wolcott* was present at all times and was actually cooperating with the *Dexter* in a joint endeavor to make the *I'm Alone* stop, the requirements of the doctrine of "Hot Pursuit" were met and the additional factor that the *Dexter* joined in the chase does not invalidate the legality of the action of the American authorities.

The only remaining question is whether the Coast Guard officials were justified in sinking the *I'm Alone*. The undisputed evidence is that the master of the *I'm Alone* refused to stop although repeatedly warned, and that there was

no way of boarding it while in motion and that the Coast Guard officials had the choice of allowing it to escape or sinking it. A significant fact in the case is that the master of the *I'm Alone* preferred to be sunk rather than to be taken into court for adjudication by the courts of the United States where the nature of its activities, its distance from the coast, its speed and the other factors in the case would have been subject to impartial judicial examination.

The Captain of the *I'm Alone* could at any time have signalled his readiness to comply with the Coast Guard's request, thus putting an end to any danger either to his vessel or to himself and his crew. If the Captain of the *I'm Alone* considered that he was being illegally treated, his proper recourse would seem to have been to surrender under protest and to seek his remedy in the courts and through diplomatic channels.

The officers of the Coast Guard used the utmost discretion, and refrained from using force except as a last resort, and in firing on the *I'm Alone* used the greatest precaution to avoid any loss of life. The one member of the *I'm Alone* crew who died as a result of drowning was pulled out of the water by a member of the Coast Guard who jumped overboard for that purpose.

May I point out that should it become generally known that Coast Guard vessels would not enforce their orders to stop, offending vessels, when hailed within treaty distance, would probably always endeavour to escape and thus defeat the purpose for which the various liquor treaties to which the United States is a party were negotiated.

In this connection it may not be amiss to recall the case of the United States fishing vessel *Siloam* which on May 24, 1923, was found by the Canadian preventive vessel *Malaspina* in the vicinity of Solander Island off the coast of British Columbia. While there was some disagreement as to the actual facts in the case, it is undeniable that an American fishing schooner was sunk and a member of its crew was killed by rifle fire from the Canadian preventive vessel while the Canadian vessel was trying to enforce its police powers. The British Embassy transmitted two notes to the Department reporting this incident and the Department acknowledged these notes without protest or comment. Regardless of where the pursuit of the *Siloam* began, it can scarcely be denied that the degree of force exercised by a preventive vessel of your Government in its effort to compel obedience to its authority in that case constitutes a striking parallel to that employed by the Coast Guard in endeavoring to force the *I'm Alone* to stop. It is presumed that the action of the commanding officer of the *Malaspina* was based on the provisions of Chapter 43, Section 7 (2) of the Revised Statutes of Canada which reads as follows:—

> "On any such ship, vessel or boat, failing to bring to when required, being chased by any such Government vessel or cruiser having such pennant and ensign hoisted, the captain, master or other person in charge of such Government vessel or cruiser may, after first causing a gun to be fired as a signal, fire at or into such ship, vessel or boat."

I need hardly state that the Government of the United States deplores the loss of the life of Mr. Leon Maingui, a member of the crew of the *I'm Alone*, by drowning. In connection with his death, however, it must be taken into account that, as already pointed out, the master of the *I'm Alone* had it within his power to remove at any time prior to the sinking of the vessel the danger in which the lives of the members of his crew were placed by complying with the order to stop. It must also be remembered that at least two members of the crew of the *I'm Alone*, Jens Jensen and Edouard Fouchard, testified under oath at New Orleans that the members of the crew of the *I'm Alone* implored the Captain to obey the command of the Coast Guard officers to stop. These same men testified that there were no life preservers on board the vessel.

With reference to the responsibility for the death of Mr. Maingui, Mr. Edouard Fouchard, a cousin of the deceased, was asked during his examination at New Orleans the following direct question:—

> "Do you think that the Captain (of the *I'm Alone*) was the cause of your cousin's death?"

His answer, under oath, was as follows:—

> "If there were life preservers on board and the Captain had surrendered like a sensible man, my cousin would never have died."

Your note states that when the Coast Guard vessel *Dexter* joined in the pursuit and commenced firing on the *I'm Alone,* it was with the deliberate intention of sinking the vessel and not merely of rendering it helpless, as, you suggest, might have been done by crippling its rudder. In this regard, may I remind you that the commanding officer of the *Dexter,* as well as the master of the *Wolcott* repeatedly commanded the *I'm Alone* to stop and made every possible effort to force it to do so before sinking it. The Coast Guard authorities point out that perhaps the easiest way to stop an offending vessel in ordinary circumstances is to fire into its engine room and thus disable its engines. Unfortunately, the officers of the *Dexter* did not know the location of the *I'm Alone's* engines, and they feared that if they fired into the vessel with the view of disabling its engines, the shells might kill members of the crew.

It may be added that, according to a statement of the commanding officer of the *Dexter,* during the latter part of the chase, several members of the crew of the *I'm Alone* were observed aft on the schooner. There was a heavy sea and the vessels were rolling badly. The commanding officer of the *Dexter* feared that, if he tried, in such circumstances, to disable the schooner's rudder, a shell might strike it high and kill those members of the crew who were aft. It thus appeared to him that the safest course to pursue was to fire into the vessel below the water line and this was done. It is to be noted that no member of the crew was injured by gun fire, and, had there been life preservers on board, there is every reason to believe that the life of Mr. Leon Maingui would have been spared.

It is my earnest hope that the above statement may satisfy the Canadian Government that in the case of the *I'm Alone* the American authorities were justified by the facts in pursuit of the vessel on the high seas; that their sinking of the ship was, in the circumstances, inevitable and that they acted throughout in full accord with the law. I hope even more that this may prove to be true because I so thoroughly appreciate the very important assistance generously accorded by the Canadian Government in the prevention of the smuggling of intoxicating liquors into the United States. I am sure you will realize that it is the aim of all branches of this Government in the enforcement of the Prohibition Law, as well as all other laws, to act themselves not only in a strictly legal manner but with due regard to the dictates of humanity.

If your Government, however, after a careful examination of this note, still finds itself unable to concur in the findings of facts and the conclusions of law set forth herein, the Government of the United States will gladly agree to submit the matter to arbitration as provided for in Article IV of the Convention between the United States and His Britannic Majesty of January 23, 1924.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) HENRY L. STIMSON.

811.114 I'm Alone/98.

The Hon. Henry L. Stimson,
Secretary of State of the United States,
Washington, D.C.

Sir:

1. I have the honour to acknowledge the receipt of your note of the 17th of April, 1929, concerning the sinking of the Canadian schooner *I'm Alone* by the United States Coast Guard, and to state that I communicated it immediately to my government.

2. I have been instructed by the Secretary of State for External Affairs to inform you that His Majesty's Government in Canada have given careful consideration to the contents of the note. They desire to convey their appreciation of the expression of gratitude on the part of the Government of the United States for the friendly cooperation of Canada in the prevention of smuggling of alcoholic liquors into the United States. The Canadian Government appreciate also the full and reasoned statement which you have presented of the facts and the principles of international law bearing on the case, as they appear to the Government of the United States. They regret, however, their inability to concur in certain important aspects of this presentation.

3. Upon the question of fact as to the position of the schooner when commanded by the revenue cutter *Wolcott* to heave to for examination, and as to the speed of the vessel, there is marked discrepancy between the evidence of the Coast Guard officers and the evidence of the captain and members of the crew of the schooner. These discrepancies appear capable of solution only by an examination of all the evidence by an impartial tribunal, and it is therefore considered unnecessary to repeat the statements cited in my previous note, or to review the contrary evidence which has been furnished you through the Secretary of the Treasury.

4. It appears desirable, however, to advert briefly to a point brought forward in your note as proving that the position in question was within the hour's sailing distance from shore within which the Convention of 1924 accords the right of search and seizure. The view is advanced that Captain Randell's refusal to heave to when first commanded may be taken as evidence that he knew that he was within an hour's sailing distance from shore, as he must have been aware that otherwise his vessel could not legally be seized and that he would have nothing to fear in complying with a command to stop and be examined. It is surely the contrary deduction that is to be drawn. Such a contention might be taken to lead to the conclusion that the further a vessel was out on the high seas and the less ground there was for an order to halt, the more readily should the order be obeyed. If the schooner was outside the treaty limits, an order to halt was without legal force. There had been a number of previous cases where vessels which had been seized were later found by the courts to have been outside the treaty limit, but where heavy loss followed the long delays involved in the court proceedings; in a number of cases claims have been advanced for compensation on such grounds.

5. Even, however, were it not established that the *I'm Alone* was beyond the treaty limits when ordered to stop, the Government of Canada cannot agree that any adequate ground has been established for pursuit on the high seas. They have previously indicated their view that the doctrine of hot pursuit which has been advanced is not applicable to a pursuit which, as is agreed to have

been the case in the present instance, did not begin in territorial waters. The doctrine is adequately summarized by the latest and most authoritative United States expositor, as follows:—

> "The case (of hot pursuit) is one where a vessel has committed an offence against the territorial laws within the three mile limit. The agents of the local sovereign attempt to arrest the offender which endeavours to escape. If the pursuit is not brought to a successful end before the ship leaves territorial waters, the pursuit may be continuously pursued upon the high seas." (Jessup, *The Law of Territorial Waters and Maritime Jurisdiction,* New York, 1927, p. 106).

The doctrine in any form has not found complete acceptance. Under the arbitral award of M. Asser, it was held that capture of the United States sealers *James Hamilton Lewis* and *C. H. White* on the high seas could not be justified on the ground of pursuit from territorial waters (*1902 Foreign Relations of the United States,* App. 1, pp. 454-462). Where recognized, it is under the distinct limitation that the pursuit must be initiated within territorial waters. This limitation was clearly accepted by the Secretary of State of the United States in the address given shortly after the signature of the 1924 Convention, to which reference was made in my previous note. In his work, *International Law, chiefly interpreted and applied by the United States,* (Vol. I, p. 420), Mr. Charles Cheney Hyde, after stating that "when a foreign vessel, after having violated the municipal laws of a State, within its territorial waters, puts to sea to avoid detention, conditions justifying immediate pursuit and capture on the high seas, on grounds of self defence, are rarely if ever present", supports on the ground of effective administration of justice, pursuit and capture, "if the pursuit be commenced before the ship has actually escaped from the territorial waters". Article VIII of the Rules on the Definition and Regime of the Territorial Sea, adopted by the Institute of International Law in 1894, confined the right to "a pursuit commenced in the territorial sea". In the statement made in the Fur Seal Arbitration by Sir Charles Russell, which is usually relied upon as expressing the acquiescence of Great Britain in the doctrine, there is a significant qualification: "It must be a hot pursuit, it must be immediate, and it must be within limits of moderation". In the case of the *North,* in the Canadian courts, which has been cited, pursuit began from territorial waters.

6. The contrary findings of United States courts in the *Vinces, Pescawha* and *Newton Bay* cases have not, as you have fully recognized, international validity, nor have they been accepted by either the British or the Canadian Government. With regard to the *Vinces,* His Majesty's Ambassador in Washington communicated with the Secretary of State, asking for information regarding the attitude of the United States Government, and declaring that though not desiring to make any representations, His Majesty's Government did not wish it to be thought that they accepted all the principles upon which the decision of the District Court had been based, and fully reserved their rights. As to the *Newton Bay,* which is still before the courts, and the *Pescawha,* the question of representations has been under discussion between this Legation and the Government of Canada. During the recent Conference on Commercial Smuggling in Ottawa, reference was made by the Canadian representatives to the tendency of the United States enforcing authorities to go beyond the letter and spirit of the Convention of January, 1924.

7. In support of the extended interpretation of the doctrine of hot pursuit, you have pointed out that the rights conferred by the Convention of 1924 are of a novel character and may therefore be taken as extending the right of arrest to a greater distance than had heretofore been acknowledged under inter-

national law; and state that one of the purposes of the Convention was to extend in effect the distance from the coast within which the jurisdiction of the United States might be exercised with respect to certain classes of British ships. The Government of Canada are unable to accept this view. The first article of the Convention expressed the firm intention of the high contracting parties to uphold the principle that the three-mile zone constituted the proper limit of territorial waters. The provisions as to search and seizure beyond the three-mile limit were explicit exceptions to that recognized principle. They did not extend the territorial limits of the United States nor confer any general jurisdiction. The very fact that the rights conferred were of a novel character appears to be a conclusive reason against still further extension by any forced construction. It is submitted that if any such extension had been contemplated it would have been effected by explicit agreement, as was done in the Treaty of Helsingfors of the 19th August, 1925, between the Baltic States. This treaty, it will be recalled, provided for the mutual exercise of the right of search within a twelve-mile zone. It was clearly recognized, however, that such a provision did not involve extension of the doctrine of hot pursuit to cover pursuit originating within this enlarged zone. It was found necessary, in order to secure such a right, to provide explicitly in this treaty, "without prejudice to the attitude taken by each of the contracting parties with regard to the legal principle governing territorial and customs zones", that "if a vessel suspected of engaging in contraband traffic is discovered in the enlarged zone hereinbefore described, and escapes out of this zone, the authorities of the country exercising control over the zone in question may pursue the vessel beyond such zone into the open sea and exercise the same rights in respect of it as if it had been seized within the zone.

8. Nor are the Government of Canada able to recognize the force of the view that such an extension is to be implied, because otherwise the advantages granted by the convention would be illusory. According to recent statements of the head of the Coast Guard Service, "the problem of Rum Row has been practically solved," and "smuggling from the high seas is now only about one-eighth of what it was a few years ago." Yet out of the scores of seizures effected, it is believed that only in four have the Coast Guard authorities themselves considered recourse necessary to the extended version of the practice. Even if the treaty had failed to yield the results anticipated, that would hardly appear to warrant its indefinite extension.

9. The chief remaining question is whether the force used, which resulted in sinking the vessel, was warranted. The determination of the degree of compulsion rightly exercisable in pursuit is not without difficulty. The force used, it is submitted, should in any case be limited to the minimum necessary to effect seizure, and be designed to make seizure possible. There does not appear to be warrant for the adoption of measures regardless of the outcome and such as to defeat the possibility of seizure and the necessary subsequent adjudication. If it was not possible to cripple the schooner without sinking her, or to board her in the weather prevailing, it is considered that it would have been possible to continue pursuit further without reaching the territorial waters of another state, during which time the weather might have cleared and boarding been effected. According to the deposition of the mate of the *I'm Alone*, the captain of the *Wolcott* stated later that he had urged this course on the captain of the *Dexter*, but his advice was disregarded. When all the circumstances are taken into account, including the persistent rifle fire and the putting of the crew in irons, the impression that is formed is of a distinctly punitive intent. The view that the responsibility for the sinking should be shifted to the captan of the schooner rests on two assumptions for which, as has been indicated above, there

does not appear to be valid ground—that the schooner was within treaty limits when ordered to halt, and that pursuit beginning within the treaty limits but outside territorial waters would be justified. Whatever view may be taken of the course of the captain of the *I'm Alone*, it would hardly appear possible to absolve from responsibility the captain and crew of the revenue cutter, who two hundred miles from the United States coast riddled the schooner with shells and plunged its crew into a rough sea, and to transfer the responsibility for the loss of life to the captain of the schooner for failing to provide lifebelts for such a contingency.

10. The case of the United States fishing vessel *Siloam* is cited as a parallel. Without taking the ground that the procedure of the Canadian preventive vessel *Malaspina* on that occasion was absolutely without fault, it may be observed that the two cases appear to present essential differences. The *Siloam* was found and pursued within Canadian territorial waters. Upon repeated refusals to heave to, and after threatening action on the part of the *Siloam's* captain, the *Malaspina* fired shells around the vessel. Later, rifles were used with the object of disabling the steering gear, and one shot unfortunately killed a sailor on the *Siloam*. The vessel, however, was not sunk by shell fire, but apparently was scuttled by her crew.

11. I regret, therefore, to find that the Government of the United States and the Government of Canada have not been able to reach similar conclusions as to the facts in the present case and as to the applicable principles of law. Both Governments have an interest in the full and strict observance of international agreements, and it is desirable that a definite agreement be reached as to the interpretation of the treaty provisions which is to be accepted. The Convention itself provides a means for determining whether in any case the enforcing authorities have proceeded within the rights conferred under Article 2. I am therefore instructed to say that His Majesty's Government in Canada have much pleasure in accepting the proposal of the United States to submit the matter to arbitration as provided for in Article IV of the Convention between His Britannic Majesty and the President of the United States of America of the 23rd January, 1924. I shall be prepared to discuss with you at your convenience the procedure to be adopted to this end.

I have the honour to be, with the highest consideration,

Sir,

Your most obedient, humble servant,

(Signed) VINCENT MASSEY.